

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.K., Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Jacksonville, FL, Employer**

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**Docket No. 18-0835  
Issued: September 23, 2020**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 13, 2018 appellant, through counsel, filed a timely appeal from a December 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective May 28, 2017, as he no longer had disability causally related

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

to his accepted January 14, 2016 employment injury; and (2) whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions causally related to the accepted January 14, 2016 employment injury.

### **FACTUAL HISTORY**

On January 15, 2016 appellant, a 59-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on January 14, 2016 he sustained a “shoulder/elbow” injury while in the performance of duty when a chair in which he was sitting broke, causing him to fall backwards and land on his elbow. He stopped work on January 14, 2016.<sup>3</sup>

Appellant submitted a January 15, 2016 report in which Dr. Richard M. Blecha, a Board-certified orthopedic surgeon, detailed the first treatment appellant sought for his January 14, 2016 injury. Dr. Blecha advised that appellant complained of cervical, lumbar, right shoulder, right elbow, and bilateral knee pain after the collapse of a chair in which he was sitting on January 14, 2016. In a March 4, 2016 report, he diagnosed strains of the cervical spine, right shoulder, lumbar spine, and both knees, as well as right elbow contusion and “recognized preexisting osteoarthritis of the left knee.”

OWCP accepted appellant’s claim for neck, lower back, and bilateral knee strain, and contusion of the right elbow. After initially denying appellant’s disability claim, it paid appellant wage-loss compensation benefits on the supplemental rolls commencing February 29, 2016 and on the periodic rolls commencing July 29, 2016.

On April 15, 2016 appellant advised Dr. Blecha that his multiple pain symptoms continued, particularly with respect to his knees, but he also reported that he had headaches which had been present since the January 14, 2016 fall. In a May 4, 2016 report of an April 22, 2016 examination, Dr. Blecha noted that appellant reported that he hit his head on the floor on January 14, 2016. He added post-traumatic headache to the conditions he previously diagnosed.

On May 12, 2016 Dr. Blecha indicated that it was difficult to evaluate appellant’s McMurray’s maneuver upon physical examination due to his weight of 450 pounds. He opined that several diagnoses should be added, including lumbar spondylosis with radiculopathy, lumbar spinal stenosis, lumbar herniated nucleus pulposus (HNP) with radiculopathy, chronic/non-traumatic rotator cuff tear of the right shoulder, chronic meniscal tear and osteoarthritis of the right knee, and permanent aggravation of osteoarthritis of the left knee.

In a June 23, 2016 report, Dr. Blecha reported examination findings and noted that, per magnetic resonance imaging (MRI) scan results, several additional conditions should be considered for acceptance as work-related conditions, including aggravation of preexistent chronic right rotator cuff tear, aggravation of preexistent lumbar spondylosis with radiculopathy, aggravation of preexistent lumbar spinal stenosis, lumbar HNP with radiculopathy, aggravation of

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<sup>3</sup> On January 26, 2016 OWCP received a statement from appellant, to be included in the “cause of injury” section of his Form CA-1, in which he indicated that on January 14, 2016 his desk chair broke when he leaned back in the chair, causing him to fall backwards. Appellant noted, “When I fell back I hit my left knee under my cubical desk, and twisted my right knee under my body. When I hit the floor I jammed my right elbow into the floor, which caused injuries to my back and right shoulder. My head hit the floor causing my neck to snap back.”

chronic meniscal tear and preexistent osteoarthritis of the right knee, and aggravation of preexistent osteoarthritis of the left knee.

In an August 18, 2016 report, Dr. Blecha again listed the additional diagnoses he referenced in his June 23, 2016 report. He maintained that MRI scans and x-ray tests showed a right rotator cuff tear, lumbar spondylosis and stenosis, right knee medial meniscus tear, and osteoarthritis of both knees which preexisted the January 14, 2016 employment injury/incident. Dr. Blecha opined that these problems, while preexisting in nature, were not symptomatic until the January 14, 2016 employment injury occurred and therefore were “medically aggravated by the incident.” He advised that a lumbar MRI scan also showed an HNP, but noted that there was no way to tell from the MRI scan when it had occurred. However, since appellant had no low back pain prior to the January 14, 2016 employment injury, it was his opinion that the herniation was caused or aggravated by that injury.

In a September 7, 2016 report, Dr. Robert Martinez, a Board-certified neurologist, noted that appellant reported that his chair broke on January 14, 2016 and he fell back, injuring his knees and shoulders. Appellant also reported that he hit the back of his head on the concrete floor and advised that he was not knocked unconscious. Dr. Martinez indicated that the cerebellar examination revealed no nystagmus, ataxia, tremor, dysmetria, dysdiadochokinesia, or hypotonia. Appellant’s cranial nerves were within normal limits, sensory examination was normal, and all extremities had 5/5 strength. Dr. Martinez diagnosed cerebral concussion (grade 1) with post-traumatic cephalalgia (headaches) and prescribed Topamax.

OWCP referred appellant and the case record to Dr. Steven J. Lancaster, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of his accepted employment-related conditions.<sup>4</sup> It requested that Dr. Lancaster evaluate whether appellant continued to have residuals/disability from his January 14, 2016 employment injury. OWCP also requested that he provide an opinion regarding whether appellant sustained additional medical conditions causally related to the January 14, 2016 employment injury including post-traumatic headaches, rotator cuff tear or other shoulder disorder, HNP of the lumbar spine, right knee medial meniscus tear, or knee osteoarthritis.

In a September 22, 2016 report, Dr. Lancaster discussed appellant’s factual and medical history, including the circumstances of his January 14, 2016 fall at work<sup>5</sup> and the prior findings upon physical examination/diagnostic testing. He reported the findings of his own physical examination, noting that appellant had no atrophy or crepitus of the shoulders, and advised that he was unable to assess an impingement sign. Appellant would not allow full range of motion (ROM) of his knees expressing pain upon ROM testing. Dr. Lancaster was unable to palpate an effusion due to the “massive size” of appellant’s legs. Appellant had a positive straight-leg raise sign about both hips at approximately 60 to 70 degrees and reported that such testing hurt his knees, thighs, hips, and back. Dr. Lancaster advised that appellant had no focal neurologic deficit as best could

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<sup>4</sup> OWCP provided Dr. Lancaster a statement of accepted facts (SOAF) dated June 23, 2016.

<sup>5</sup> Appellant reported to Dr. Lancaster that on January 14, 2016 he sat in a chair which broke, causing him to fall backwards. He advised that he landed on his right elbow with some compression/pressure across his right shoulder and that his knees hit the undersurface of his desk. Appellant further reported that he also strained his back during the incident.

be tested. He diagnosed lumbar strain with preexistent lumbar spondylosis and probable herniated disc at L5-S1, right shoulder strain with preexistent rotator cuff tear and degenerative joint disease, bilateral knee strains with preexistent severe degenerative joint disease and meniscal tears, right elbow strain (resolved), persistent headaches (nonaccepted condition), and cervical strain (resolved).

In response to OWCP's question of whether, due to the January 14, 2016 fall, appellant sustained additional conditions (as delineated in the referral documents), Dr. Lancaster opined that falling backwards out of a chair would not supply sufficient impact to cause conditions more severe than a contusion to the right elbow, strain of the right shoulder, and potentially contusions to the knees. Dr. Lancaster explained that appellant's knees had significant, advanced preexisting degenerative joint disease and the meniscal tears constituted preexisting degenerative tears. He further opined that, given the minimal degree of trauma from falling backwards three feet from a chair, appellant's right shoulder rotator cuff tear most likely was entirely preexisting in nature as was his herniated lumbar disc secondary to significant degenerative changes. Dr. Lancaster maintained that the mechanics of the January 14, 2016 injury were insufficient to result in the severity of appellant's medical conditions. He opined that the accepted conditions to appellant's neck, right shoulder, right elbow, low back, and knee would have resolved at some point over the prior eight months and returned to the natural progression of the preexisting degenerative condition of his neck and back, severe arthritis of both knees with degenerative meniscal tearing, and the degenerative rotator cuff tear of his right shoulder. Dr. Lancaster determined that appellant could perform his regular job as a contact representative without restrictions from an orthopedic standpoint. He noted that appellant's headaches, which constituted a nonaccepted condition, might affect his capacity to return to work. Dr. Lancaster advised that he did not have documentation for a neurologic evaluation of appellant's headaches.

In an October 13, 2016 report, Dr. Blecha noted that appellant reported that he had become extremely depressed and suffered from persistent headaches. He advised that he had referred appellant for a psychological evaluation to Dr. Walter E. Afield, a Board-certified psychiatrist. Dr. Blecha listed the accepted work-related diagnoses as cervical, lumbar, and bilateral knee strains, and right elbow contusion and noted, "In addition, I feel that the other diagnoses for the most part consistent of [sic] aggravation of preexistent pathology should be accepted as detailed in my report of [August 18, 2016]."

In a duty status report (Form CA-17) dated October 13, 2016, Dr. Blecha provided diagnoses "due to injury" of cervical and lumbar strains, HNP, and unspecified conditions of the right shoulder and knees. He advised that appellant could not work for two months.<sup>6</sup>

The report of a January 18, 2017 MRI scan of appellant's brain contained an impression of no evidence of acute intracranial hemorrhage or extra-axial collection "given history of recent head trauma," round focus of susceptibility artifact within the right anterior parietal lobe demonstrating

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<sup>6</sup> In a Form CA-17 dated November 18, 2016, Dr. Blecha listed a date of injury of January 14, 2016, provided diagnoses "due to injury" of lumbar strain and osteoarthritis of the knees, and indicated that appellant could not work for two months.

no associated edema or signal abnormality (likely reflecting remote blood product deposition), no definite cavernous malformation, and mild cerebral volume loss (likely age related).<sup>7</sup>

In a Form CA-17 report dated January 20, 2017, Dr. Blecha listed a date of injury of January 14, 2016 and provided diagnoses “due to injury” of lumbar spondylosis, bilateral rotator cuff syndrome, and bilateral knee osteoarthritis. He advised that appellant could only work if he had a well-fitting ergonomic chair.<sup>8</sup>

In an undated letter, received by OWCP on February 9, 2017, appellant requested that the accepted conditions related to his January 14, 2016 employment injury be expanded to include headaches and cerebral concussion. He requested that OWCP review the submitted medical evidence, including Dr. Martinez’ September 7, 2016 report.

Appellant subsequently submitted a February 1, 2017 report from Dr. Afield who noted that Dr. Blecha referred appellant to him due to concerns about depression and anxiety, and that he had been providing treatment since June 2014. He reported that on January 14, 2016 he leaned back in a chair at work and the chair broke, resulting in him falling straight backwards and hitting his head on the floor. Appellant further advised that he developed pain in his neck, elbow, and shoulders. Dr. Afield discussed the prior treatment of appellant’s multiple physical problems and noted that appellant did not have a history of significant mental health issues prior to January 14, 2016. He opined that appellant’s headaches exacerbated his physical issues and emotional problems because they caused a great deal of strain on him as he did not want to do much physically and did not “feel well ever.” Dr. Afield indicated that appellant was very depressed and noted that what he was “looking at and working with” was directly related to the January 14, 2016 accident with the “injuries that he did sustain on that day, and the residual problems that he was having as a result.”

In a March 16, 2017 note, Dr. Martinez advised that appellant was unable to work due to “inability to focus on computer screen.”

In a March 30, 2017 letter, OWCP notified appellant that it proposed to terminate his wage-loss compensation and medical benefits because his accepted conditions had ceased without residuals. It advised that its proposed action was based on the September 22, 2016 report of Dr. Lancaster, OWCP’s referral physician. OWCP afforded appellant 30 days to submit additional evidence or argument challenging the proposed action.

In an undated letter received on April 10, 2017, appellant argued that the medical evidence of record supported the acceptance of his claim for cerebral concussion with post-traumatic cephalalgia.

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<sup>7</sup> A January 4, 2017 MRI scan of the cervical spine contained an impression of probable left-sided disc herniation at C4-5 and additional areas of foraminal/canal stenosis most evident on the left.

<sup>8</sup> In a January 20, 2017 reasonable accommodation request form, Dr. Blecha diagnosed lumbar spondylosis and lumbosacral disc disruption (HNP at L5-S1). He noted that appellant reported experiencing pain with prolonged sitting and recommended the provision of a large ergonomic chair. In a January 20, 2017 narrative report, Dr. Blecha indicated that the January 18, 2017 MRI scan of appellant’s brain showed no sign of acute injury.

Appellant submitted a February 24, 2017 report from Dr. Blecha who again indicated that he felt several diagnoses should be accepted as work related, *i.e.*, those he first identified in his June 23, 2016 report. Dr. Blecha advised that appellant could not work until an appropriate ergonomic chair was provided to him.

In a March 16, 2017 report, Dr. Martinez provided a description of the January 14, 2016 fall at work which was similar to the description he provided in his September 7, 2016 report. He noted that appellant reported having headaches five days per week, which were sometimes accompanied by dizziness and blurry vision, and that he had trouble focusing on a computer screen for very long before his symptoms were aggravated. Dr. Martinez detailed physical examination findings which were similar to those obtained on September 7, 2016. He diagnosed cerebral concussion (grade 1) with post-traumatic cephalalgia and opined that appellant's headaches were post-traumatic secondary to his concussion.<sup>9</sup> Dr. Martinez further advised that appellant felt he was unable to work due to his neurological condition because of his inability to focus on a computer screen which in turn aggravated his headaches, blurry vision, and dizziness.<sup>10</sup>

By decision dated May 26, 2017, OWCP terminated appellant's wage-loss compensation benefits, effective May 28, 2017, as he no longer had disability causally related to his accepted January 14, 2016 employment injury. It found the weight of the medical evidence was represented by the opinion of Dr. Lancaster, OWCP's referral physician.<sup>11</sup>

On June 13, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on November 1, 2017, appellant testified that when his chair broke and he fell backwards on January 14, 2016, he hit his head and his legs became pinned under his desk. OWCP's hearing representative afforded appellant 30 days to submit additional evidence. OWCP did not receive additional evidence within the afforded period.

By decision dated December 19, 2017, OWCP's hearing representative affirmed the May 26, 2017 termination decision. He found that Dr. Lancaster's opinion represented the weight of the medical evidence and demonstrated that appellant's accepted conditions had ceased without residuals. The hearing representative further found that appellant had not submitted sufficient medical evidence to establish additional conditions causally related to the accepted January 14,

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<sup>9</sup> Dr. Martinez noted that he ruled out such conditions as brain hemorrhage, skull fracture, brain tumor/cancer, brain hematoma, traumatic aneurysm, or any form of "brain damage."

<sup>10</sup> In a March 16, 2017 note, Dr. Martinez advised that appellant was unable to work due to his neurological condition. He noted that appellant reported he was unable to focus on a computer screen and that his headaches got much worse at work.

<sup>11</sup> Although OWCP had proposed the termination of both wage-loss compensation and medical benefits in its March 30, 2017 letter, it specifically indicated in its May 26, 2017 decision that the claim remained open for medical benefits.

2016 employment injury, including a concussion, headaches, emotional conditions, or orthopedic conditions.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>13</sup> After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>14</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective May 28, 2017.

In his September 22, 2016 second opinion report, Dr. Lancaster indicated that he had reviewed the June 23, 2016 SOAF and conducted a physical examination. He diagnosed a number of conditions, some work related, others preexisting, and opined that the mechanism of injury, falling three feet backwards out of a chair, would not supply sufficient impact to cause conditions more severe than a contusion to the right elbow, strain of the right shoulder, and potentially contusions to the knees. Dr. Lancaster further opined that appellant's knees had significant, advanced preexisting degenerative joint disease and that the meniscal tears constituted preexisting degenerative tears. He also found that appellant's right shoulder rotator cuff tear most likely was entirely preexisting in nature, as was his herniated lumbar disc secondary to significant degenerative changes. However, Dr. Lancaster failed to provide a well-rationalized opinion explaining how or whether the accepted factors of appellant's federal employment contributed, in any way, to the "preexisting" conditions he diagnosed. The Board has explained that medical rationale is particularly necessary if appellant has a preexisting condition.<sup>16</sup>

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<sup>12</sup> In reaching this determination, the hearing representative found that the case record did not support that appellant's head struck the floor on January 14, 2016. He indicated, "Appellant did not include such an injury on the [Form CA-1]."

<sup>13</sup> *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>14</sup> *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>15</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>16</sup> *See R.T.*, Docket No. 17-1730 (issued May 3, 2018).

As noted, it is OWCP's burden to establish that wage-loss compensation benefits should be terminated.<sup>17</sup> Due to the deficiencies the Board therefore finds that Dr. Lancaster's report is insufficient to meet OWCP's burden of proof to terminate appellant's wage-loss compensation.

Thus, the Board finds that OWCP erred by terminating appellant's wage-loss compensation, effective May 28, 2017, based on the second opinion report of Dr. Lancaster. Accordingly, the December 19, 2017 decision of OWCP shall be reversed with respect to termination of wage-loss compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or disability for which compensation is claimed are causally related to the employment injury.<sup>18</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>19</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and/or period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>20</sup> Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>21</sup>

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>22</sup>

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<sup>17</sup> *Supra* note 15.

<sup>18</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009). *See also J.T.*, Docket No. 17-0578 (issued December 6, 2017).

<sup>19</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Dolores C. Ellyett*, 41 ECAB 992 (1990).

<sup>20</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>21</sup> *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>22</sup> *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).



## **ANALYSIS -- ISSUE 2**

The Board finds that the case is not in posture for decision.

Due to the finding as to Issue 1, that the SOAF submitted to the second opinion physician was deficient and could not be used as a proper basis for a medical report, the issue of whether the claim should be accepted for additional conditions requires further development by OWCP. Upon remand, OWCP shall update the SOAF and further develop the issue of whether claim expansion is warranted. After completing the necessary development, OWCP shall issue a *de novo* decision.

## **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective May 28, 2017. The Board further finds that the case is not in posture for decision as to whether the claim should be expanded to include additional conditions causally related to his accepted January 14, 2016 employment injury.

## **ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2017 decision of the Office of Workers' Compensation Programs is reversed with respect to the termination of wage-loss compensation benefits, and the decision is set aside with respect to appellant's claim for expansion of the accepted conditions.

Issued: September 23, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board